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**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.378 of 2020**

Arising Out of PS. Case No.-171 Year-2019 Thana- DANIIYAWAN District- Patna

THE STATE OF BIHAR

... .. Petitioner/s

Versus

BRIND PASWAN, Son of Late Moti Paswan, Resident of Village - Erai Mustafapur, P.S. - Daniyawan, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dilip Kumar Sinha, A.P.P.

For the Respondent/s : Mr. Arvind Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 29-01-2021

This suo motu criminal revision has been registered in pursuance of order of a learned Single Judge Bench dated 29.09.2020 passed in Cr. Misc. No. 1095 of 2020. The learned Bench was of the opinion that correctness and judicial propriety of order dated 23.12.2019 passed in A.B.P. No. 9658 of 2019 by learned Additional Sessions Judge-I, Patna City whereby the sole opposite party-Brind Paswan, herein, was allowed anticipatory bail, requires to be examined. Hence, this application.

2. Cr. Misc. No. 1095 of 2020 was prayer for anticipatory bail by accused Putur Paswan of Daniyawan P.S. Case No. 171 of 2019 registered for offences punishable under Sections 147, 148, 149, 323, 324 and 302 of the Indian Penal Code. The Hon'ble Bench noticed that allegation against Putur



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Paswan, who was refused anticipatory bail, and against Brind Paswan, who was allowed anticipatory bail, by the same Presiding Officer of the Court of 1st Additional Sessions Judge, Patna City, was of same magnitude of commission of assault by Katta and iron rod causing injury at the head and other parts of three persons including the informant. The injury caused to the mother of the informant resulted in her death.

3. Brind Paswan, opposite party herein, was noticed and has appeared through Mr. Arvind Kumar Singh, learned counsel.

4. Heard the parties.

5. It appears that the same Presiding Judge of the Court of Additional Sessions Judge-I, Patna City had considered prayer for anticipatory bail of opposite party-Brind Paswan and allowed the prayer for anticipatory bail on 23.12.2019 in A.B.P. No. 9658 of 2019 whereas prayer of Putur Paswan was already refused by the same learned Judge on 11.11.2019. The learned Single Judge had call for a report form the District & Sessions Judge, Patna regarding the conflicting order passed by the same Presiding Officer in the same case. Through his letter no. 37, dated 10th September, 2020, the learned District Judge, Patna submitted report concluding that the order passed by the learned



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Additional Sessions Judge-I, Patna City in the matter of prayer for anticipatory bail of opposite party-Brind Paswan and Putur Paswan were inconsistent in nature.

6. The prosecution case as disclosed in the FIR of Daniyawan P.S. Case No. 171 of 2019 recorded on the fardbeyan of one of the injured Mili Kumari is that her mother along with elder sister were returning from the market. When they reached near the house of Ankit Kumar, altogether ten named accused persons who were already there in a pre-planned manner started assault against the mother, the elder sister of the informant. The accused lashed with the weapons in their hand i.e. lathi, Katta (a weapon of cutting) and iron rod. When the informant reached there accused Putur Paswan and opposite party-Brind Paswan lashed with Katta and iron rod respectively and committed assault to the informant also causing fracture of right hand. In the said assault, the elder sister of the informant, namely, Mahima suffered head injury and fracture of left hand whereas mother suffered multiple injuries on her body including fracture of right leg and she became unconscious. Later on, mother died during treatment.

7. The Doctor, who performed the postmortem examination, noticed multiple injuries on the person of the



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deceased. The injured witness have supported the allegation before the police as eyewitness of the occurrence. Thus, both accused Putur Paswan and opposite party-Brind Paswan were carrying identical allegation.

8. Learned counsel for the petitioner submits that there is apparent conflict between the two orders whereby one co-accused was allowed anticipatory bail and another was refused by the same Presiding Judge, though there was material on the record of equal magnitude of allegation.

9. Learned counsel for the opposite party contends that once privilege of bail was granted by the learned court below, the same cannot be interfered with unless there is misuse of privilege of bail and flagrant violation of the settled norms for consideration of prayer for bail.

10. However, learned counsel does not dispute that seriousness of the allegation and actual role played by the accused is one of the considerations while granting anticipatory bail as held in **Siddharam Satlingappa Mhetre v. State of Maharashtra** reported in (2011) 1 SCC 694.

11. While granting anticipatory bail to opposite party-Brind Paswan, the learned court below did not consider that how the case of Brind Paswan was distinguishable from



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Putur Paswan who was already refused anticipatory bail by the learned court below by order dated 11.12.2019 passed in A.B.P. No. 9437 of 2019.

12. Moreover, while refusing prayer for anticipatory bail to Putur Paswan, the learned Judge had noted in the order dated 11.12.2019 that Putur Paswan who was carrying Katta and Brind Paswan who was carrying iron rod committed assault against informant, her sister and mother causing injury of fracture of right hand, head injury to Mahima and injury to the mother of the informant who died in the hospital.

13. While granting anticipatory bail to opposite party- Brind Paswan, the learned Judge noted that no special accusation is evident against Brind Paswan. Some other co-accused were allowed anticipatory bail in the past.

14. The learned court below did not consider that the learned court below had itself refused prayer for anticipatory bail to co-accused Putur Paswan allegation against whom was identical to that of Brind Paswan who was allowed anticipatory bail after few days of refusal of prayer for anticipatory bail to Putur Paswan.

15. Thus, in my view, the impugned order suffers



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from non-application of judicial mind, lacks reason, is result of error of record and suffers from non-consideration of material on the records i.e. serious act committed by Brind Paswan. Hence, the impugned order is not sustainable in law. Accordingly, the same is hereby set aside and this revision application is allowed. Opposite Party-Brind Paswan is directed to surrender and pray for regular bail within four weeks.

16. Since the same judicial officer has passed conflicting orders in the same case against the material on the record, the conduct and fairness in judicial approach of the judicial officer concern may require probe in the administrative side. Hence, let this order along with the judicial record of this criminal revision application as well as of Cr. Misc. No. 1095 of 2020 be placed before Hon'ble the Chief Justice for needful.

(Birendra Kumar, J)

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